



RECEIVED

SEP 18 2003

#4
OFFICE OF PETITIONS

PTO/SB/64 (05-03)

Approved for use through 04/30/2003. OMB 0651-0031

U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT ABANDONED
UNINTENTIONALLY UNDER 37 CFR 1.137(b)Docket Number (Optional)
HIM-PT009.1

First named inventor: Richard B. Himmelstein

Application No.: 09/666,725

Art Unit: 3621

Filed: September 20, 2000

Examiner: Firmin Backer

Title: ELECTRONIC REAL ESTATE BARTERING SYSTEM

Attention: Office of Petitions
Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450
FAX: (703) 308-6916

NOTE: If information or assistance is needed in completing this form, please contact Petitions Information at (703) 305-9282.

The above-identified application became abandoned for failure to file a timely and proper reply to a notice or action by the United States Patent and Trademark Office. The date of abandonment is the day after the expiration date of the period set for reply in the Office notice or action plus an extensions of time actually obtained.

APPLICANT HEREBY PETITIONS FOR REVIVAL OF THIS APPLICATION

NOTE: A grantable petition requires the following items:

- (1) Petition fee;
- (2) Reply and/or issue fee;
- (3) Terminal disclaimer with disclaimer fee --required for all utility and plant applications filed before June 8, 1995; and for all design applications; and
- (4) Statement that the entire delay was unintentional.

1. Petition fee

 Small entity-fee \$ 650.00 (37 CFR 1.17(m)). Applicant claims small entity status. See 37 CFR 1.27. Other than small entity - fee \$ _____ (37 CFR 1.17(m))

2. Reply and/or fee

A. The reply and/or fee to the above-noted Office action in the form of Reply Pursuant to 37 C.F.R. 1.111 _____ (identify type of reply):

 has been filed previously on _____.
 is enclosed herewith.

B. The issue fee of \$ _____.

 has been paid previously on _____.
 is enclosed herewith.650.00 09/09/2003 09666725
01 FT:2453
01 10

[Page 1 of 2]

This collection of information is required by 37 CFR 1.137. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 1.0 hour to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

RECEIVED

SEP 10 2003

3. Terminal disclaimer with disclaimer fee

OFFICE OF PETITIONS

- Since this utility/plant application was filed on or after June 8, 1995, no terminal disclaimer is required.
- A terminal disclaimer (and disclaimer fee (37 CFR 1.20(d)) of \$ _____ for a small entity or \$ _____ for other than a small entity) disclaiming the required period of time is enclosed herewith (see PTO/SB/63).

4. STATEMENT: The entire delay in filing the required reply from the due date for the required reply until the filing of a grantable petition under 37 CFR 1.137(b) was unintentional. [NOTE. The United States Patent and Trademark Office may require additional information if there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137(b) was unintentional (MPEP 711.03(c), subsections (III)(C) and (D))].

WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.

9/4/2003

Date

Signature

Telephone
Number: 215-568-6400

STEVEN J. GELMAN

Typed or printed name

Volpe and Koenig, P.C.

United Plaza, Suite 1600

Address

30 South 17th Street

Philadelphia, PA 19103

Address

Enclosures: Fee Payment Reply Terminal Disclaimer Form Additional sheets containing statements establishing unintentional delay Other: Statement Re: Unintentional Abandonment with Exhibits A-E

CERTIFICATE OF MAILING OR TRANSMISSION [37 CFR 1.8(a)]

I hereby certify that this correspondence is being:

deposited with the United States Postal Service on the date shown below with sufficient postage as first class mail in an envelope addressed to: Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

transmitted by facsimile on the date shown below to the United States Patent and Trademark Office at (703) 308-6916.

September 4, 2003

Date

Signature

STEVEN J. GELMAN

Type or printed name of person signing certificate

RECEIVED

SEP 10 3

PTO/SB/17 (05-03)

OFFICE OF PETITIONS

Approved for use through 04/30/2003. OMB 0651-0032

U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

O I P E
S E P 0 8 2003
P A T E N T & T R A D E M A R K
O F F I C E

FEE TRANSMITTAL for FY 2003

Effective 01/01/2003. Patent fees are subject to annual revision.

 Applicant claims small entity status. See 37 CFR 1.27

TOTAL AMOUNT OF PAYMENT (\$ 650.00)

Complete if Known

Application Number	09/666,725
Filing Date	September 20, 2000
First Named Inventor	Richard B. Himmelstein
Examiner Name	Firmin Backer
Art Unit	3621
Attorney Docket No.	HIM-PT009.1

METHOD OF PAYMENT (check all that apply)

 Check Credit card Money Order Other None
 Deposit Account:

Deposit Account Number
22-0493

Deposit Account Name
Volpe and Koenig, P.C.

The Director is authorized to: (check all that apply)

- Charge fee(s) indicated below Credit any overpayments charge any deficiencies
- Charge any additional fee(s) during the pendency of this application
- Charge fee(s) indicated below, except for the filing fee to the above-identified deposit account.

FEE CALCULATION

1. BASIC FILING FEE

Large Entity Fee Code (\$)	Small Entity Fee Code (\$)	Fee Description	Fee Paid
1001 750	2001 375	Utility filing fee	
1002 330	2002 165	Design filing fee	
1003 520	2003 260	Plant filing fee	
1004 750	2004 375	Reissue filing fee	
1005 160	2005 80	Provisional filing fee	
SUBTOTAL (1)		(\$ 0.00)	

2. EXTRA CLAIM FEES FOR UTILITY AND REISSUE

Total Claims	Independent Claims	Multiple Dependent	Extra Claims	Fee from below	Fee Paid

Large Entity Fee Code (\$)	Small Entity Fee Code (\$)	Fee Description
1202 18	2202 9	Claims in excess of 20
1201 84	2201 42	Independent claims in excess of 3
1203 280	2203 140	Multiple dependent claim, if not paid
1204 84	2204 42	** Reissue independent claims over original patent
1205 18	2205 9	** Reissue claims in excess of 20 and over original patent
SUBTOTAL (2)		(\$ 0.00)

**or number previously paid, if greater; For Reissues, see above

3. ADDITIONAL FEES

Large Entity Small Entity

Fee Code (\$)	Fee Code (\$)	Fee Description	Fee Paid
1051 130	2051 65	Surcharge - late filing fee or oath	
1052 50	2052 25	Surcharge - late provisional filing fee or cover sheet	
1053 130	1053 130	Non-English specification	
1812 2,520	1812 2,520	For filing a request for ex parte reexamination	
1804 920*	1804 920*	Requesting publication of SIR prior to Examiner action	
1805 1,840*	1805 1,840*	Requesting publication of SIR after Examiner action	
1251 110	2251 55	Extension for reply within first month	
1252 410	2252 205	Extension for reply within second month	
1253 930	2253 465	Extension for reply within third month	
1254 1,450	2254 725	Extension for reply within fourth month	
1255 1,970	2255 985	Extension for reply within fifth month	
1401 320	2401 160	Notice of Appeal	
1402 320	2402 160	Filing a brief in support of an appeal	
1403 280	2403 140	Request for oral hearing	
1451 1,510	1451 1,510	Petition to institute a public use proceeding	
1452 110	2452 55	Petition to revive - unavoidable	
1453 1,300	2453 650	Petition to revive - unintentional	650.00
1501 1,300	2501 650	Utility issue fee (or reissue)	
1502 470	2502 235	Design issue fee	
1503 630	2503 315	Plant issue fee	
1460 130	1460 130	Petitions to the Commissioner	
1807 50	1807 50	Processing fee under 37 CFR 1.17(q)	
1806 180	1806 180	Submission of Information Disclosure Stmt	
8021 40	8021 40	Recording each patent assignment per property (times number of properties)	
1809 750	2809 375	Filing a submission after final rejection (37 CFR 1.129(a))	
1810 750	2810 375	For each additional invention to be examined (37 CFR 1.129(b))	
1801 750	2801 375	Request for Continued Examination (RCE)	
1802 900	1802 900	Request for expedited examination of a design application	
Other fee (specify) _____			
*Reduced by Basic Filing Fee Paid		SUBTOTAL (3)	(\$ 650.00)

(Complete if applicable)

SUBMITTED BY			
Name (Print/Type)	STEVEN J. GELMAN	Registration No. (Attorney/Agent)	41,034 Telephone 215-568-6400
Signature	September 4, 2003		

WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.

This collection of information is required by 37 CFR 1.17 and 1.27. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

O I P E
SEP 08 2003
PATENT & TRADEMARK OFFICE

PATENT

RECEIVED

SEP 10 2003

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

OFFICE OF PETITIONS

In the **PATENT APPLICATION** of:

Richard B. Himmelstein

Application No.: 09/666,725

Our File: HIM-PT009.1

Confirmation No.: 6238

Date: September 4, 2003

Filed: September 20, 2000

For: ELECTRONIC REAL ESTATE
BARTERING SYSTEM

Group: 3621

Examiner: Firmin Backer

**STATEMENT ACCOMPANYING PETITION TO REVIVE AN
UNINTENTIONALLY ABANDONED APPLICATION
PURSUANT TO 37 C.F.R. §1.137(b)**

Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Applicant respectfully requests that the above-identified patent application be revived. Pursuant to 37 C.F.R. §1.137(b), Applicant is submitting herewith:

1. A Reply to the outstanding Office Action dated February 12, 2003;
2. The petition fee of \$650, as set forth in 37 C.F.R. §1.17(m); and

Applicant: Richard B. Himmelstein
Application No.: 09/666,725

3. The following statement of facts showing that the entire delay in filing the required reply from the due date for the reply until the filing of this petition was unintentional.

STATEMENT OF FACTS

1. The present application was filed by the firm of Volpe and Koenig, P.C. (hereinafter "the firm") on September 20, 2000.

2. The firm received two electronic mail ("e-mail") messages from the Applicant on August 28, 2002 informing the firm that the prosecution of the present application was to be undertaken by different counsel, Jeff Brandt. (Copies of these e-mails are attached as Exhibit A.)

3. In an e-mail exchange on September 4, 2002, Applicant advised the firm to maintain its files, but to forward any correspondence received on the file to the new counsel. (Copies of these e-mails are attached as Exhibit B.)

4. Per the firm's standard operating procedures, the Applicant was informed (via an October 29, 2002 letter, attached as Exhibit C) that the firm's file relating to the present application had been closed.

5. The firm did not receive the Office Action dated February 12, 2003.

6. On August 22, 2003, Applicant informed the firm via e-mail that an Office Action had been issued in connection with the present application, and that

Applicant: Richard B. Himmelstein
Application No.: 09/666,725

Applicant's new counsel had not received the Office Action. (A copy of this e-mail is attached as Exhibit D.)

7. On August 22, 2003, Jeff Brandt received a facsimile copy of the outstanding Office Action. This copy of the Office Action was forwarded to the firm by the Applicant on August 26, 2003. (A copy of the fax cover sheet accompanying the Office Action, indicating both facsimile dates is attached as Exhibit E.)

Respectfully submitted,

Richard B. Himmelstein

By 
Steven J. Gelman
Registration No. 41,034
(215) 568-6400

Volpe and Koenig, P.C.
United Plaza, Suite 1600
30 South 17th Street
Philadelphia, PA 19103

SJG/
Enclosures (7)



RBHIMMELST@aol.com

m

08/28/2002 03:36 PM

To: gbh@volpe-koenig.com
Subject: Fwd: Barter Securities Cases

I'm referring to your file No. HIM-PT009_1

Regards,

Richard Himmelstein
857 Fort Fisher Blvd. South.
Kure Beach, NC 28449
910/458-4797 - phone
rbhimmelst@aol.com

RECEIVED

AM/PM

AUG 28 2002

VOLPE & KOENIG, P.C.

----- Message from RBHIMMELST@aol.com on Wed, 28 Aug 2002 15:34:21 EDT -----

To: gbh@volpe-koenig.com
Subject Fwd: Barter Securities
: Cases

Hope all is well. Because of continuity, I am hereby requesting Jeff Brandt to handle the prosecution of this case. I would like you to retain your files until further notice (i.e., I may be filing continuations with you).

Regards,

Richard Himmelstein
857 Fort Fisher Blvd. South.
Kure Beach, NC 28449
910/458-4797 - phone
rbhimmelst@aol.com

----- Message from "Jeffrey L. Brandt" <jbrandt@axiomlegal.net> on Wed, 28 Aug 2002 15:26:42 -0400 -----

To: "Walt Hanchuk" <wgh@morganfinnegan.com>, "Richard Himmelstein"
<rbhimmelst@aol.com>
Subject Barter Securities Cases
:

KAZIMI HANI M (703)305-1061 P/3624 (703)308-5357

Today, literally as I clicked thru to the pto web page to look up Examiner Kazimi's contact info, he phoned to introduce himself.

He is gathering all the cases. It will take him a few weeks to get them together.

He can examine the 1999 and 2000 cases (the real estate and first barter case). He can examine continuation cases (which should include our 2001 cases - he will look at them and let me know). The last-filed case may need a petition to make special before he can pick it up out of sequence.

He was very positive about an interview when he starts to examine the cases. He indicated we could talk about setting one up when he gets the cases together.

Overall, it was a good call.

EXHIBIT A

Regards, Jeff

Jeffrey L. Brandt
Intellectual Property & Licensing
17 Old Pierce Road
Ridgefield, CT 06877
tel: 203.438.1077
fax: 866.422.4530
cell: 203.300.1592
jbrandt@axiomlegal.net

This e-mail message is intended only for the personal use of the
recipient(s) named above. This message may be an attorney-client
communication and as such privileged and confidential. If you are not an
intended recipient, you may not review, copy or distribute this
message. If you have received this communication in error, please notify us
immediately by e-mail and delete the original message.



RBHIMMELST@aol.com

m

08/28/2002 03:34 PM

To: gbh@volpe-koenig.com
Subject: Fwd: Barter Securities Cases
HIM-PTO09.1

Hope all is well. Because of continuity, I am hereby requesting Jeff Brandt to handle the prosecution of this case. I would like you to retain your files until further notice (i.e., I may be filing continuations with you).

Regards,

Richard Himmelstein
857 Fort Fisher Blvd. South.
Kure Beach, NC 28449
910/458-4797 - phone
rbhimmelst@aol.com

RECEIVED
AM/PM

AUG 28 2002

VOLPE & KOENIG, P.C.

----- Message from "Jeffrey L. Brandt" <jbrandt@axiomlegal.net> on Wed, 28 Aug 2002 15:26:42 -0400

To: "Walt Hanchuk" <wgh@morganfinnegan.com>, "Richard Himmelstein"
<rbhimmelst@aol.com>

Subject: Barter Securities Cases

:

KAZIMI HANI M (703)305-1061 P/3624 (703)308-5357

Today, literally as I clicked thru to the pto web page to look up Examiner Kazimi's contact info, he phoned to introduce himself.

He is gathering all the cases. It will take him a few weeks to get them together.

He can examine the 1999 and 2000 cases (the real estate and first barter case). He can examine continuation cases (which should include our 2001 cases - he will look at them and let me know). The last-filed case may need a petition to make special before he can pick it up out of sequence.

He was very positive about an interview when he starts to examine the cases. He indicated we could talk about setting one up when he gets the cases together.

Overall, it was a good call.

Regards, Jeff

) Jeffrey L. Brandt
Intellectual Property & Licensing
17 Old Pierce Road
Ridgefield, CT 06877
tel: 203.438.1077
fax: 866.422.4530
cell: 203.300.1592
jbrandt@axiomlegal.net

This e-mail message is intended only for the personal use of the recipient(s) named above. This message may be an attorney-client communication and as such privileged and confidential. If you are not an intended recipient, you may not review, copy or distribute this message. If you have received this communication in error, please notify us.

immediately by e-mail and delete the original message.

(

)

Jay Halt
09/04/2002 03:38 PM

To: RBHIMMELST@aol.com
Subject: Re: Barter Securities Cases

Richard,

We will close the physical file, and keep it in our closed file section. We will take the HIM-PT005.1 file off of our docket.

Regards,
Jay

Gerald B. Halt Jr., Attorney at Law

Telephone: +1-215-568-6400 Ext.103
Facsimile: +1-215-568-6499
E-Mail: gbh@volpe-koenig.com

RBHIMMELST@aol.com



RBHIMMELST@aol.co
m
09/04/2002 03:01 PM

To: gbh@volpe-koenig.com

cc:

Subject: Re: Barter Securities Cases

He doesn't need anything. Please maintain your file and if you get any new responses from the USPTO office, forward them to him.

Regarding HIM-PT005.1, please get a quote for doing the formal drawings (and I will do likewise from a different source). I actually thought your source was high last time.

Regards,

Richard Himmelstein
857 Fort Fisher Blvd. South.
Kure Beach, NC 28449
910/458-4797 - phone
rbhimmelst@aol.com

Jay Halt
09/04/2002 03:00 PM

To: RBHIMMELST@aol.com
Subject: Re: Fwd: Barter Securities Cases

Thanks Richard.

Do you want me to send him the file, (or a copy of the file), as we did for BarterSecurities? Please advise.

I hope all is well with you and your family!

Regards,
Jay

Gerald B. Halt Jr., Attorney at Law

Telephone: +1-215-568-6400 Ext.103
Facsimile: +1-215-568-6499
E-Mail: gbh@volpe-koenig.com

RBHIMMELST@aol.com



RBHIMMELST@aol.co
m
08/28/2002 03:36 PM

To: gbh@volpe-koenig.com

cc:

Subject: Fwd: Barter Securities Cases

I'm referring to your file No. HIM-PT009_1

Regards,

Richard Himmelstein
857 Fort Fisher Blvd. South.
Kure Beach, NC 28449
910/458-4797 - phone
rbhimmelst@aol.com

---- Message from RBHIMMELST@aol.com on Wed, 28 Aug 2002 15:34:21 EDT -----

To: gbh@volpe-koenig.com
Subject Fwd: Barter Securities
:Cases

Hope all is well. Because of continuity, I am hereby requesting Jeff Brandt to handle the prosecution of this case. I would like you to retain your files until further notice (i.e., I may be filing continuations with you).

Regards,

Richard Himmelstein
857 Fort Fisher Blvd. South.
Kure Beach, NC 28449
910/458-4797 - phone
rbhimmelst@aol.com

---- Message from "Jeffrey L. Brandt" <jbrandt@axiomlegal.net> on Wed, 28 Aug 2002 15:26:42 -0400

To: "Walt Hanchuk" <wgh@morganfinnegan.com>, "Richard Himmelstein"
<rbhimmelst@aol.com>
Subject: Barter Securities Cases

KAZIMI HANI M (703) 305-1061 P/3624 (703) 308-5357

Today, literally as I clicked thru to the pto web page to look up Examiner Kazimi's contact info, he phoned to introduce himself.

He is gathering all the cases. It will take him a few weeks to get them together.

He can examine the 1999 and 2000 cases (the real estate and first barter case). He can examine continuation cases (which should include our 2001 cases - he will look at them and let me know). The last-filed case may need a petition to make special before he can pick it up out of sequence.

He was very positive about an interview when he starts to examine the cases. He indicated we could talk about setting one up when he gets the cases together.

Overall, it was a good call.

Regards, Jeff

Jeffrey L. Brandt
Intellectual Property & Licensing
17 Old Pierce Road
Ridgefield, CT 06877
tel: 203.438.1077
fax: 866.422.4530
cell: 203.300.1592
jbrandt@axiomlegal.net

This e-mail message is intended only for the personal use of the recipient(s) named above. This message may be an attorney-client communication and as such privileged and confidential. If you are not an intended recipient, you may not review, copy or distribute this message. If you have received this communication in error, please notify us immediately by e-mail and delete the original message.



Suite 400, One Penn Center
1617 John F. Kennedy Boulevard
Philadelphia, PA 19103

Telephone: +1-215-568-6400
Facsimile: +1-215-568-6499
www.volpe-koenig.com

BRINGING LAW TO YOUR IDEAS

Gerald B. Halt, Jr.
gbh@volpe-koenig.com

October 29, 2002

Mr. Richard B. Himmelstein
857 Fort Fisher Boulevard South
Kure Beach, NC 28449

Re: File: HIM-PT009.1
U.S. Patent Appln. No. 09/666,725
ELECTRONIC REAL ESTATE BARTERING SYSTEM

Dear Richard:

Per our recent conversation, we have closed this file and removed the matter from our docket and follow-up systems. With the transfer and closing of the file, we have no further responsibility for this matter. Accordingly, our physical file will be destroyed in **December 2008**. If the above course of conduct is in any way inconsistent with your wishes, please advise us immediately.

Very truly yours,

Volpe and Koenig, P.C.

By _____

Gerald B. Halt, Jr.

GBH/srs

Jay Halt
08/22/2003 01:13 PM

To: RBHIMMELST@aol.com
cc: jbrandt@axiomlegal.com, (bcc: Katie Gehringer/Volpe-Koenig)
Subject: HIM-PT009.1

Richard/Jeff,

We have not received anything for this case. That was not unexpected since we closed our file and removed it from our docketing and follow up systems subsequent to the transfer of the file last October. I could check into it, but since we should no longer be attorneys of record for the case, we may be unable to get any information.

It may be advisable for Jeff to check into it, and if he doesn't get anywhere, we could then contact the PTO. Is that alright with you Jeff? Please advise.

Thanks,
Jay

RBHIMMELST@aol.com



RBHIMMELST@aol.co
m
08/22/2003 10:38 AM

To: gbh@volpe-koenig.com
cc: jbrandt@axiomlegal.com
Subject: Fwd: Barter Securities

Jay--

Apparently there was an office action on the Barter Real Estate case in February 2003 and now the examiner says it is going abandoned. Both M&F and Jeff Brandt say it was never transferred to them. Do you know what's up with it?

Please feel free to call Jeff directly and let me know what's going on as well.

Regards,

Richard B. Himmelstein

857 Fort Fisher Blvd. South.
Kure Beach, NC 28449
910/458-4797 - phone
rbhimmelst@aol.com

----- Message from "Jeffrey L. Brandt" <jbrandt@axiomlegal.net> on Fri, 22 Aug 2003 10:29:01 -0400 -----

To: "Daniel Sheridan" <dsheridan@morganfinnegan.com>, "Richard Himmelstein" <RBHIMMELST@aol.com>

cc: "Walt Hanchuk" <wghanchuk@morganfinnegan.com>

Subject Barter Securities

:

Daniel - Per Barter's direction, please do the EPO filing on the 4159-4005PC application leaving all the claims intact (estimate of \$9500-10,500).

I agree my records show the 'real estate' case 09/666,725 remained with the Volpe firm.

Thanks! Jeff

Jeffrey L. Brandt

17 Old Pierce Road

Ridgefield, CT 06877

jbrandt@axiomlegal.net

Office: 1.203.438.1077

Mobile: 1.203.300.1592

efax: 1.866.422.4530

This file is a confidential communication intended for the identified recipient only. It may contain attorney-client privileged information. If you receive it by mistake, please contact the sender identified above for handling information.

08/22/03 FRI 10:03 FAX 703 308 3691

US PATENT OFFICE

2001



UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
 United States Patent and Trademark Office
 P.O. Box 1450
 Alexandria, VA 22313-1450
www.uspto.gov

Fax Cover Sheet

Date: 22 Aug 2003

To: Jeff Brandt	From: Firmin Backer
Application/Control Number: 09666,725	Art Unit: 3621
Fax No.: 866-422-4530	Phone No.: (703) 305-0624
Voice No.: 215-568-6400	Return Fax No.: (703) 305-7687
Re:	CC:

Urgent For Review For Comment For Reply Per Your Request

Comments:

Number of pages 8 including this page

STATEMENT OF CONFIDENTIALITY

This facsimile transmission is an Official U.S. Government document which may contain information which is privileged and confidential. It is intended only for use of the recipient named above. If you are not the intended recipient, any dissemination, distribution or copying of this document is strictly prohibited. If this document is received in error, you are requested to immediately notify the sender at the above indicated telephone number and return the entire document in an envelope addressed to:

Commissioner for Patents
 P.O. Box 1450
 Alexandria, VA 22313-1450

EXHIBIT E

08/22/03 FRI 10:04 FAX 703 308 3691

US PATENT OFFICE

4002

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
 United States Patent and Trademark Office
 Address: COMMISSIONER OF PATENTS AND TRADEMARKS
 Washington, D.C. 20231
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/666,725	09/20/2000	Richard B. Himmelman	HIM-PT009.1	6238

3624 7590 02/12/2003

VOLPE AND KOENIG, P.C.
 SUITE 400, ONE PENN CENTER
 1617 JOHN F. KENNEDY BOULEVARD
 PHILADELPHIA, PA 19103

EXAMINER

BACKER, FRMIN

ART UNIT	PAPER NUMBER
3621	

DATE MAILED: 02/12/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

08/22/03 FRI 10:04 FAX 703 308 3891

US PATENT OFFICE

2003

Office Action Summary	Application N .	Applicant(s)	
	09/688,725	HIMMELSTEIN, RICHARD B.	
	Examiner	Art Unit	
	Firmin Backer	3621	

— The MAILING DATE of this communication appears on the cover sheet with the correspondence address —
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM
THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.138(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 20 September 2000.
 2a) This action is FINAL. 2b) This action is non-final.
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.
Disposition of Claims
 4) Claim(s) 1 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
 5) Claim(s) _____ is/are allowed.
 6) Claim(s) 1 is/are rejected.
 7) Claim(s) _____ is/are objected to.
 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
 10) The drawing(s) filed on 20 September 2000 is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 11) The proposed drawing correction filed on _____ is: a) approved b) disapproved by the Examiner.
 If approved, corrected drawings are required in reply to this Office action.
 12) The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
 * See the attached detailed Office action for a list of the certified copies not received.
 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
 a) The translation of the foreign language provisional application has been received.
 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s) _____ . |
| 2) <input checked="" type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) <u>2</u> . | 6) <input type="checkbox"/> Other: |

08/22/03 FRI 10:04 FAX 703 308 3691

US PATENT OFFICE

004

Application/Control Number: 09/666,725
Art Unit: 3621

Page 2

DETAILED ACTION

This is in response to a letter for patent filed on September 20th, 2000 in which claim 1 is presented for examination. Claim 1 is pending in the letter.

Claim Objections

1. Claim 1 is objected to because of the following informalities: Applicant discloses "*the internet*" in paragraph 7 line 1. Applicant is advised to delete the word "*the*" in order to overcome Examiner's objection Appropriate correction is required.
2. Claim 1 is objected to because of the following informalities: Applicant discloses "*such a*" in paragraph 4 line 5. Applicant is advised to delete the word "*such*" in order to overcome Examiner's objection Appropriate correction is required.

Double Patenting

3. A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefore ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The

Application/Control Number: 09/666,725

Page 3

Art Unit: 3621

filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

4. Claim 1 provisionally rejected under 35 U.S.C. 101 as claiming the same invention as that of claim 1 of copending Application No. 09/921,534. This is a provisional double patenting rejection since the conflicting claims have not in fact been patented.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(c) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

6. Claim 1 is rejected under 35 U.S.C. 102(e) as being anticipated by Minton (U.S. PG Pub 2002/0091611 A1).

7. As per claim 1, Minton teaches a bartering system for implementing barter between a plurality of parties each having one or more classes of items available for barter (*data processing system (20) for allowing individual to buy and sell securities*) (*see fig 1, 2, 3, page paragraph 0014*) comprising means (*server, 316*) for creating a barter order (*buys and sell orders*) (*fig 3, page 4 paragraph 0053*) including means for designating a selected quantity (*quantity*) of a first class of items (*securities*) to be bartered (*to be traded*) (*fig 3, page 4 paragraph 0053*), means for

Application/Control Number: 09/666,725
Art Unit: 3621

Page 4

designating a date range (*time*) for transferring title (*transmitting title*) of the selected quantity (*quantity of securities*) of the first class of items to be bartered whereby a barterer may elect to defer the transfer of title to the first class items to a time after the barter order is used to complete a barter transaction or elect to transfer title (*transmitting title*) along with the completion of such barter transaction (*see abstract, page 2 paragraph 0016, claim 16*), means for designating a barter value (*the price*) of the first class of items to be bartered (*fig 3, page 4 paragraph 0053*), and means for designating a second class of items (*securities*) to be acquired (*bought*) (*fig 3, page 4 paragraph 0053*) means for posting (*displaying order*) barter orders (*order to buy and sell*) via the internet (*public network*) to a barter database (*see figs 1, 3 page 4 paragraph 0055, 0056*), means for displaying (*display 96*) via the internet posted barter orders whose first class of items match the second class of items of a barterer's order (*see page 4 paragraph 0056*), and means for selecting (*matching and executing*) a posted barter order from the displaying means to effectuate a barter transaction which combines a barterer's barter order with the selected posted order (*paragraph 0057, 0069*).

Conclusion

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

a. *Hawkins et al (6,247,000) teach method of matching a plurality of predetermined financial transactions for a plurality of users, wherein data for the plurality of predetermined financial transactions.*

Application/Control Number: 09/666,725
Art Unit: 3621

Page 5

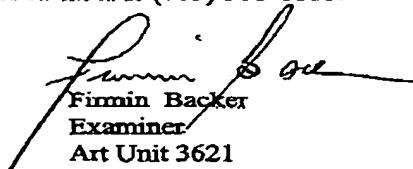
b. *Hawkins et al (U.S. Patent No. 6,029,146) teach a system and method for direct broker to broker trading that will automatically match an investor's security order with an executing broker's match confirmation and will automatically generate and route via the SWIFT Financial Network a settlement instruction to the investor's clearing agent.*

c. *Minton (U.S. Patent No. 6,014,643) teach a data processing system, and a network of data processing systems for allowing individuals to buy and sell securities directly from other individuals, with only minimal oversight by a broker.*

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Firmin Backer whose telephone number is (703) 305-0624. The examiner can normally be reached on Mon-Thu 8:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Trammell can be reached on (703) 305-9768. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 305-7687 for regular communications and (703) 305-7687 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1113.



Firmin Backer
Examiner
Art Unit 3621

February 4, 2003

x

A copy of this reference is not being furnished with this Office action. (See MPEP § 707.05(a).)
Dates in MM-VYYY format are publication dates. Classifications may be US or foreign.

08/22/03 FRI 10:05 FAX 703 308 3691

US PATENT OFFICE

2008

Notice of References Cited	Application/Control No. 09/668,725	Applicant(s)/Patent Under Reexamination HIMMELSTEIN, RICHARD B.	
	Examiner Firmin Backer	Art Unit 3621	Page 1 of 1

U.S. PATENT DOCUMENTS

*	Document Number Country Code-Number-Kind Code	Date MM-YYYY	Name	Classification
A	US-6,202,051	03-2001	Woolston, Thomas G.	705/27
B	US-6,085,176	07-2000	Woolston, Thomas G.	705/37
C	US-2002/0091811	07-2002	MINTON, VERNON F.	705/37
D	US-6,247,000	06-2001	Hawkins et al.	705/37
E	US-6,014,643	01-2000	Minton, Vernon F.	705/37
F	US-6,029,148	02-2000	Hawkins et al.	705/35
G	US-			
H	US-			
I	US-			
J	US-			
K	US-			
L	US-			
M	US-			

FOREIGN PATENT DOCUMENTS

*	Document Number Country Code-Number-Kind Code	Date MM-YYYY	Country	Name	Classification
N					
O					
P					
Q					
R					
S					
T					

NON-PATENT DOCUMENTS

*	Include as applicable: Author, Title Date, Publisher, Edition or Volume, Pertinent Pages)		
U			
V			
W			
X			

A copy of this reference is not being furnished with this Office action. (See MPEP § 707.05(a).)
 Dates in MM-YYYY format are publication dates. Classifications may be US or foreign.

U.S. Patent and Trademark Office
PTO-892 (Rev. 01-2001)

Notice of References Cited

RECEIVED

Part of Paper No. 3

AM/PM

AUG 26 2003

VOLPE & KOENIG, P.C.